THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
A.O. No. 458 of 2003

National Insurance Company Limited
Near Jamana Palace, Haridwar, District Haridwar.

…**Appellant**

Versus

1. Anuj alias Romi son of Chandrabhan Singh,
   Resident of Ahmadpur Grant, P.S. Jwalapur,
   District Haridwar.
2. S.K. Tyagi Son of J.P. Tyagi,
   R/O 510, Awas Vikas Colony, Ranipur Mor Haridwar
   (Owner of Vehicle No. UP 10-C-4000).
3. S.K. Tyagi son of Sri J.P.Tyagi,
   R/O 510 Awas Vikas Colony Ranipur Mor Haridwar,
   District Haridwar (Driver)

… **Respondents.**

Sri D.S.Patni, Adv. learned counsel for the appellant.
Sri R.S.Latwal, Advocate, Learned Counsel for the respondent No.1.

Date April 20, 2006.

P.C : Hon. B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 ***(for short the Act)*** is directed against the judgment and award dated 16-10-2003, passed by the Motor Accident Claims Tribunal/Additional District Judge Haridwar ***(in short the Tribunal)*** in Motor Accident Claim Petition No. 10 of 2002, Anuj alias Romi Vs. S.K. Tyagi and others, whereby compensation of Rs. 1,31,000/- has been awarded in favour of the claimant against the Insurance Company-appellant.

Relevant facts are that claimant Anuj alias Romi filed claim petition before the learned Tribunal on account of injuries suffered by him in motor vehicle accident on 10-8-2001 at about 3.30 p.m. on Bahadarabad-Roorkee road involving Maruti Car UP 10-C-4000 owned and driven by S.K.Tyagi rashly and negligently. Claim has been made for compensation of Rs. 2,91,000/-. The offending vehicle was insured with the appellant. The opposite parties contested the claim petition and filed their written statements.

The learned Tribunal framed necessary issues in the case. After recording the evidence of the parties, the learned Tribunal has decided the issues in favour of the claimant and passed the impugned order.

The impugned award has been assailed on the ground that the owner-cum-driver of the vehicle in question was not having a valid driving licence, therefore, the Insurance Company cannot be made liable to pay compensation.

I have heard submission of the learned counsel for the appellant-Insurance Company and perused the entire material on record.

The contention of the appellant is that the driver of the vehicle in question was not having a valid driving licence on the date of the accident. But this fact that the driver was not having a valid driving licence in itself is not sufficient to absolve the insurer from its liability to pay compensation unless it is proved by the insurance company that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time. In the instant case, the appellant-insurance company has not led any evidence before the Tribunal to establish that the insured was negligent or he failed to exercise reasonable care in that regard. It has not been shown as to whether it was within the knowledge of the owner of the truck that the driver was not having a valid driving licence at the relevant time. I am fortified in my view by the Apex Court judgment in the case of ***National Insurance Co. Ltd. V. Swaran Singh [(2004) 3 SCC 297].*** In para 110(iii), the Apex Court has observed as under:-

"Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the

insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time."

In the instant case, the learned Tribunal framed specific issue no. 2 on the point whether the driver of Maruti Car was not having a valid driving licence thereby violating the policy condition. The Tribunal has found that the licence was originally issued from the Licensing Authority of Saharanpur Region and it was held that the verification of the driving licence was not obtained from the concerned authority. The Insurance Company has not discharged its burden in accordance with law as laid down in the case of *Swaran Singh (supra).*

For the reasons and discussion aforesaid, the appeal lacks merit and is liable to be dismissed.

The appeal is dismissed. The impugned award dated 16-10-2003 is upheld. No order as to costs.

The amount in deposit with this Court, if any, be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant.

(B.S.Verma, J.)

RCP